

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Ms. L, et al.,

Plaintiffs,

vs.

U.S. Immigration and Customs
Enforcement,
et al.,

Defendants.

Case No. 3:18-cv-428-DMS MDD

**LEGAL SERVICE
PROVIDERS'
SUBMISSION
TO JOINT STATUS
REPORT**

The Court ordered the parties to file a joint status report ("JSR") by 3:00 p.m. on November 6, 2019, in anticipation of the status conference scheduled at 2:00 p.m. on November 8, 2019. The Legal Service Providers, who originally appeared in this action as objectors to the settlement in *M.M.M. v. Sessions*, subsequently sought and received the agreement of the Court and the parties to participate in negotiations regarding information-sharing about family separations. *See* Transcript of Telephonic Status Conference of Feb. 8, 2019, at 11-12 (ECF 109). Nevertheless, Defendants object to including the Legal Service Providers' proposed submission in the Joint Status Report. The Legal Service Providers therefore file their submission separately here.

LEGAL SERVICE PROVIDERS FOR CHILDREN—REPORT ON INFORMATION-SHARING¹

A. The Meet-and-Confer Process and Its Outcome

Working with Plaintiffs, the Legal Service Providers (LSPs) transmitted a proposal to the Government at the end of May 2019 seeking the Government's agreement to share a defined set of "Separation Information" with the lawyers for separated children and their appointed child advocates. The Separation Information requested included:

- the names and A#s of the separated parent and child;
- contact information for the child and parent;
- the date of the separation;
- an account of the basis for the separation detailed enough to allow the lawyer for the parent, if any, and the lawyer and advocate for the children, if any, to challenge that basis; and
- the name and contact information of any lawyer or qualified representative² who had made an appearance for the parent or child, as well as for the advocate appointed to the child's case, if any, to enable families to coordinate on critical decisions, including possible defenses to removal proceedings, possible reunification, or possible joint repatriation.

¹ This account addresses primarily the information-sharing requests of the Legal Service Providers for children and does not fully recount the parallel requests made on behalf of parent class members.

² The term "lawyer" as used in this section is meant also to include qualified representatives who make appearances for separated parents or children.

1 Plaintiffs and the LSPs requested that such Separation Information be made
2 regularly available to lawyers and advocates for children and parents through an
3 electronic portal or by other means.

4 The Government responded on July 11, 2019, declining to provide the
5 information requested on several grounds and declining to transmit any
6 information on a regular basis to lawyers and advocates for separated parents and
7 children.

8 Negotiations followed over the intervening months. In August, the
9 Government stated that it would provide spreadsheets, similar to those provided
10 monthly to the ACLU, to the ORR federal field specialists who oversee the
11 children's shelters. The Government represented that these spreadsheets would be
12 updated weekly and would therefore be more current than those sent monthly to
13 the ACLU. Further, the Government represented that ORR was drafting internal
14 guidance regarding information-sharing with the LSPs and child advocates which
15 would permit the federal field specialists to relay the basis for the separations, and
16 other non-law-enforcement-sensitive information contained in the spreadsheets, to
17 lawyers who had made appearances for the children and to their appointed child
18 advocates. Plaintiffs and the LSPs asked to see this guidance. By email of
19 September 4, 2019, the Government declined to share the ORR guidance. The
20 Government also advised that if lawyers or child advocates had documentary
21 information to contradict the stated basis for any particular separation, they could
22 submit such information by email, together with their notice of appearance for the
23 child or parent, to SeparationSupplementalInformation@ice.dhs.gov. The
24 Government represented that ICE would respond once it had completed review of
25 the submission.

26 At this time, therefore, the Government is sharing information with the LSPs
27 and child advocates on their request through the federal field specialists and
28

1 caseworkers in the shelters, who have been the primary sources of information for
2 the LSPs and child advocates from the onset of the child separation policy. The
3 difference now, according to the Government, is that the federal field specialists
4 and caseworkers have access to weekly spreadsheets and to guidance, which
5 remains unavailable to the LSPs or child advocates, on how to share the
6 information the spreadsheets contain. In addition, the LSPs and child advocates
7 can use an email address to transmit to ICE documentary evidence that calls into
8 question the Government's asserted basis for any given separation.

9 **B. Next Steps**

10 The next step is to assess whether the system now in place is resulting in
11 more certain and complete information-flow to the LSPs and child advocates. In
12 an effort to evaluate the current information-sharing protocol, several LSPs and
13 child advocates around the country have agreed to document their attempts to learn
14 Separation Information from the federal field specialists and shelter caseworkers.
15 This documentation will also capture the LSPs' and child advocates' attempts to
16 communicate to the government information that they believe contradicts the
17 stated basis for a separation, including how well the email system is working in
18 those instances, insofar as they are occurring, when the LSPs or child advocates
19 send documentary information to

20 SeparationSupplementalInformation@ice.dhs.gov.

21 Counsel for the LSPs is developing an online system through which LSPs
22 and child advocates can track (1) their efforts to learn Separation Information from
23 federal field specialists and shelter caseworkers, (2) their ability to communicate
24 effectively with the Government when they have information contradicting the
25 stated basis for a separation, and (3) their efforts to learn in advance about
26 reunification plans, if any. This online documentation system will not include
27
28

1 identifying information about any separated parent or child. The LSPs will report
2 back to the Court on what the documentation effort reveals.

3
4 Respectfully Submitted,

5
6 /s/ Catherine Weiss

7 Catherine Weiss
8 Lowenstein Sandler LLP
9 One Lowenstein Drive
10 Roseland, NJ, 07068
11 T: (973) 597-2438
12 F: (973) 597-2439
13 cweiss@lowenstein.com

14 *Admitted Pro Hac Vice
15
16
17
18
19
20
21
22
23
24
25
26
27
28